S.B. CIVIL WRIT PETITION NO.1458/2005

Kishore Chand Sharma vs. ADJ, Chittorgarh and others.

Date : 21.7.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. JL Purohit, for the petitioner.

Mr. RK Singhal, for the respondents.

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Heard learned counsel for the parties.

The petitioner is aggrieved against the order dated 17.1.2005 passed by the Additional District Judge, Chittorgarh by which his application under Order 9 Rule 7 CPC was dismissed.

The petitioner is one of the defendants and the trial court on the basis of substituted service by way of publication of summons in newspaper ordered to proceed ex-parte against the petitioner. The petitioner submitted grounds for his absence but those grounds were not accepted to be sufficient cause for non-appearance of the petitioner.

After going through the facts of the case, this Court is satisfied that the petitioner was served by substituted service by publication of summons in the newspaper and even if there was some delay but the petitioner applied for setting aside ex-parte order before the framing of the issues as the co-defendant has already submitted written

statement, therefore, the trial court should have taken a liberal approach in this matter to avoid the delay and also injustice which may be caused to the petitioner.

In view of the above, this writ petition is allowed, the ex-parte order passed in the case of the petitioner is set aside on payment of costs of Rs.2,000/-.

(PRAKASH TATIA), J.

S.Phophaliya